

BEFORE THE NEBRASKA PUBLIC SERVICE
COMMISSION

In the Matter of the Commission, on)	Application No.
NUSF-1		
its own motion, seeking to establish)	
guidelines for administration of the)	Progression Order
No. 6		
Nebraska Universal Service Fund)	
)		
)		
)		
		MOTION FOR REHEARING AND
		REQUEST FOR ORAL ARGUMENT

ATS Mobile Telephone, Inc. (hereinafter "ATS") does hereby respectfully request the Commission to grant a rehearing in the above-captioned matter for the following reasons:

1. The Order fails to recognize that paging services do not constitute telecommunications as defined by Neb.Rev.Stat. § 86-802(14), which provides that:

Telecommunications means the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without a change in the form or content of the information as sent or received;

For paging services as provided by ATS, when a landline telephone user utilizes the analog telephone network to call a pager number, the information sent over the analog telephone network is digitized by the paging terminal operated by the paging company and the "form" of the information sent by the caller is changed from analog to digital and not returned to its original state. Therefore, because the services provided by ATS do not constitute telecommunications service, they are not a telecommunications company for purposes of Neb.Rev.Stat. § 86-1403(4) and cannot be required to contribute to the Nebraska Telecommunications Universal Service Fund either under the terms of Neb.Rev.Stat. § 86-1401 et seq. or Neb.Rev.Stat. § 86-808.

2. Progression Order No. 6 entered March 21, 2000, fails to recognize the specific and unique geographical situation of ATS being located in close proximity to the Nebraska/Iowa border and having towers located in Iowa, Nebraska, Missouri and Kansas. While the interstate revenue percentages set forth in "Telecommunications Industry Revenue: TRS Fund Worksheet Data December 1996" and "Telecommunications Industry Revenue: 1998" may be more relevant to paging services not having the unique geographical location of ATS, in terms of ATS revenues, these have virtually no relevance. ATS, with its simulcasting system that crosses the borders of three neighboring states, is always engaged in the provision of interstate service in that its signals are, with any given page, crossing state borders. ATS asks the Commission to recognize that, at least as to paging service as provided by ATS, the service is interstate in nature.

In the alternative, ATS asks guidance from the Commission in determining what portion of its revenues are properly considered intrastate and what portion are properly considered interstate. Does the location of the transmitter control whether or not a signal to a paging unit is intrastate or interstate, i.e., if the transmitter were located only in Iowa and not in Nebraska and the signal was transmitted to a Nebraska paging unit, would the revenues generated thereby be interstate only? Does the domicile of the customer vis a vis the transmitter site control, or does it depend upon the locus of the customer at the time of receiving the page? Without guidance on this issue, i.e., how to determine what portion of the revenue is intrastate and, in addition thereto, what portion of the

intrastate revenues are properly attributable to the Nebraska jurisdiction, ATS may find itself being ordered to pay an Iowa Universal Service Charge, a Missouri Universal Service Charge and a Nebraska Universal Service Charge on its total revenues.

3. The Order fails to recognize that the only true and accurate method of measuring intra and interstate traffic is whether the service crosses state lines. ATS delivers wide area paging on a system which goes across state lines in Iowa, Missouri and Kansas. Each and every page blankets specific areas in crossing state lines and is more than "jurisdictionally interstate." The evidence supporting the foregoing was clearly presented in the direct, unrefuted testimony of Kevin Ferris, General Manager of ATS. The Commission improperly characterized this direct evidence as "conclusionary statements" in paragraph 11 of its March 21, 2000, Order. Clearly, the ATS system is unique in that all of its pages are simultaneously broadcast over transmitters located in three and soon to be four states. The evidence which Mr. Ferris presented was factual. The evidence relied upon by the Commission in paragraph 11 of its Order, citing the Fourth Reconsideration Order, is conclusionary as it purports to apply to the unique operation of ATS.

If one attempts to adopt different criteria to determine whether a service is "interstate," you cannot quantify intrastate and interstate traffic on anything but a speculative basis; thus, subjecting ATS to taxation for USF by several states on the same traffic. If a page resulting from a call by an Iowa resident to an Iowa resident is determined to be intrastate, even though the page crosses state

lines, ATS would be pulled under the Iowa USF blanket and the same is true of all surrounding states. This result would be similar to COMSAT's dilemma in *PUC v. F.C.C.*, 183 F.3d 393, 434, 435, where it was being compelled to pay more to USF than it could generate in interstate revenue. The Court revoked that order saying it was "non-equitable and discriminatory."

For the above and foregoing reasons, ATS respectfully requests that its motion for a rehearing be granted and further that it be given an opportunity to make oral arguments regarding the merits of this motion to the Commission.

Dated this ____ day of March, 2000.

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